

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

YOLANDA DEZERRA LOUIS,

Defendant.

CASE NO. 8:07CR47

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) in this case. The Defendant has filed an objection or, in the alternative, a motion for downward departure or deviation. (Filing No. 62.) The government adopted the PSR. (Filing No. 61.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

Objection

The Defendant “concedes that she may meet the definition of career offender.” However, she argues that although her qualifying prior conviction for attempted possession with intent to deliver a controlled substance (¶ 49) by name fits the criteria necessary to be considered as a predicate conviction, the conviction bore the same penalty as the offense of possession of a controlled substance, which would not qualify as a predicate conviction apparently because the offense was not punishable by a term of imprisonment exceeding one year. Therefore, the Defendant argues that she need not be considered a career offender. The Defendant has not submitted any legal authority in support of this novel argument, and the Court is unaware of supporting authority. Therefore, the objection is denied.

Departure or Variance

The plea agreement includes the following provision: “The Defendant agrees not to seek or suggest a sentence reduction via variance or deviation from the Guidelines.” (Filing No. 35, ¶ 7(e).) In light of this provision, the Defendant’s motion for downward departure or deviation is denied.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the PSR is correct in all respects;

2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final;

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

5. The Defendant’s objection or, alternatively, motion for downward departure or deviation (Filing No. 62) is denied.

Dated this 20th day of August, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge